

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 449 of 2012****Judgment Reserved on 13/09/2019****Judgment delivered on 29/11/2019**

Tikaram S/o Sonu Ram Verma, Aged about 27 years R/o Village Arjuni, P.S. Bhatapara Gramin, Distt. Raipur (C.G.) Now Distt. Baloda-Bazar (C.G.)

--- Appellant**Versus**

State of Chhattisgarh Through P.S. Bhatapara Gramin, Distt. Raipur (C.G.) Now Distt. Baloda Bazar (C.G.)

---- Respondent

For Appellant	:	Mr. C.R. Sahu, Advocate
For Respondent	:	Ms. Smita Ghai, PL

Hon'ble Shri Justice Arvind Singh Chandel**CAV Judgment**

1. This appeal is directed against the judgment dated 30/04/2012 passed in S.T. No. 06/2011 by the Special Judge, Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, Raipur, whereby the Appellant has been convicted under Section 376 of the IPC and sentenced to undergo RI for 7 years and to pay fine of Rs. 1,000/- with default stipulation.
2. Facts of the case are that on 06/02/2010, the Appellant had abducted the Prosecutrix (PW1) and taken her to Rajasthan where he committed sexual intercourse with her. Thereafter, he sold the Prosecutrix to one Babulal for Rs. 50,000/-. Babulal performed marriage with the Prosecutrix and out of their wedlock one child got birth. The matter was reported in Police

Station, Bhatapara. On that basis, offence has been registered. It is further story of prosecution that acquitted accused Vinod Kumar assisted the Appellant in abducting the Prosecutrix. It was further alleged that the Appellant took the Prosecutrix to his relative Laxmin Bai and thereafter, he along with Laxmin Bai sold the Prosecutrix to Babulal. After completion of investigation, a charge-sheet has been filed against the Appellant and co-accused Vinod. Laxmin Bai and Babulal have been shown absconded. Trial Court framed the charges against the Appellant under Sections 363, 366, 366 (A), 376 & 372 of the IPC and Sections 3(2) (5) and (1) (12) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, and against co-accused Vinod under Sections 363, 366, 366(A), 376 & 372 of the IPC. To prove the guilt of the Appellant, the prosecution has examined as many as 10 witnesses. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has acquitted co-accused Vinod from all the charges framed against him. Trial Court also acquitted the Appellant from charges framed under Section 363, 366, 366(A) and 372 of the IPC and Section 3(2) (5) and Section (1) (12) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, however, he has been convicted and sentenced as mentioned in the first paragraph of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that the Trial Court has wrongly convicted the Appellant without there being any

evidence available on record. It is further submitted that the Trial Court itself has arrived at the conclusion that at the time of incident, the age of the Prosecutrix was about 20 years and from the statement of the Prosecutrix (PW1), it is well established that she was the consenting party in the alleged act with the Appellant, therefore, no offence under Section 376 of the IPC is made out against the Appellant.

5. Learned counsel appearing on behalf of the State opposes the same and supported the judgment of conviction passed by the trial Court.
6. I have heard learned counsel for the parties and perused the record minutely.
7. There is no dispute on the point that at the relevant time, the age of the Prosecutrix was about 20 years. Now, the only question left in this case that whether she was the consenting party or not?
8. In her Court statement, the Prosecutrix (PW1) has deposed that once the Appellant had installed loud speaker at her house and due to that she firstly came in contact with the Appellant. On one day the Appellant had come to her house and asked about her father. Her father was not present, then the Appellant sprayed drugs on her and she became unconscious. Thereafter, the Appellant took her and brought to his house at village Arjuni and committed sexual intercourse many times. She further deposed that thereafter the Appellant had taken her at Bhatapara with Vinod. He left her at the house of Vinod and had gone somewhere. After some time, he came and took her to Jaipur at the house of Laxmin Bai. There, he committed sexual intercourse with her. Thereafter, he along with

Laxmin Bai sold her to Babulal. Babulal performed marriage with her.

9. The fact that the Appellant had sprayed drugs upon the Prosecutrix whereby she became unconscious for two days and stayed in the house of Appellant at village Arjuni, is not in her case diary statement, and on this point the Prosecutrix has developed her statement. In her cross-examination, this witness has also admitted that at Bhatapara station, in absence of Appellant, she stayed with Vinod for whole day. She further deposed that there was police station at Bhatapara Station. When the Appellant was not there and she was forcibly taken by the Appellant, then she had to make complaint at police station as she was having opportunity to make report, but she did not do so. This witness has further admitted that she had gone with the Appellant from Bilaspur to Raipur and there was also police station at Bilaspur station, but she did not make any complaint. Moreover, in the train there were many passengers and the police personnel were roaming in the train, but she never made complaint to anybody. In her cross-examination, she further admitted that the Appellant had left her at the house of Laxmin and she stayed there for about 15 days. In this period also, she has not made any complaint to anybody.
10. On minute examination of above evidence of the Prosecutrix, it is clear that though she stated that she was forcibly abducted and without her consent intercourse was performed with her, on material points she developed her statement. From her statement it is clear that in absence of the Appellant, she remained with Vinod at Bhatapara station, thereafter at Bilaspur station and thereafter on the way to Rajashthan and there were many opportunities with the Prosecutrix to make complaint, but she never made

any complaint. Apart from this, she stayed in the house of Laxmin for about 20 days and the Appellant was not there and there also she was having many opportunities to make complaint, but she did not do so. Thus, from the evidence and material available on record, it is well established that in the alleged act which was done with the Prosecutrix, she was the consenting party. Since, the Prosecutrix was the consenting party and her age was about 18 years, therefore, no offence is proved against the Appellant. Thus, the finding of the trial Court is not in accordance with law.

11. Consequently, the appeal is allowed. The judgment of the trial Court is quashed and the Appellant is acquitted from the charge framed against him. His bail bond be discharged forthwith.
12. Records of the court below along with the copy of this judgment be sent back forthwith for necessary compliance and action.

(Arvind Singh Chandel)
Judge